deprecation and salvage value are subtracted. Time Warner believes that the situation is unusual and that the Commission's proposed handling of the situation is appropriate.

Although the negative net investment number is partially a product of a high salvage cost in removing he pole, it is also the product of a heavily depreciated pole plant. In other words, it is the result of where in the cycle of investment/depreciation the particular utility finds itself. When poles are new and only slightly depreciated, the depreciation and capital costs will be high. And the maintenance component will recover more than is actually required. When the poles are old, the opposite is true. As the utility rebuilds portions of its pole plant, as many have, their pole attachment rates increase based on the corresponding higher investment in the poles. Obviously, SBC's poles in Oklahoma are nearing the end of their useful life and will soon have to be replaced. When those poles are replaced, SBC's pole attachment rate will jump as a result of the increase in pole investment.

Time Warner believes that this natural cycle of investment is not itself a reason for any substantial change in the formula. In fact, because most utilities are constantly installing new poles to account for customer growth in new areas, the problem of negative net investment will seldom occur. Where it does occur, we agree that the Commission's suggested resolution is correct.

Time Warner would not support a change in the formula to use all "gross" investment numbers. Use of net investment properly recognizes the extent of depreciation of the investment at issue -- poles. Use of gross investment numbers throughout would still require adjustment to depreciation and cost of capital numbers, because these both are properly a function of net plant. But more important, use of gross investment would understate the extent to which pole plant is more heavily depreciated than other plant and would provide the utilities with an over-recovery in pole attachment rates. In effect, use of gross numbers would recover for the utilities more than their actual costs for the use of the poles and would violate the statutory mandate of Section 224. 41/

II. THE COMMISSION SHOULD REVISE ITS CARRYING CHARGE COMPONENTS AS LITTLE AS POSSIBLE

A. Part 32 Administrative Accounts

The Commission has never considered, in a rulemaking context, the proper accounts to use in the telephone company carrying charge in light of the change to Part 32 accounting. Although we agree that it is appropriate for the Commission to consider this issue in a rulemaking, we do not agree with the level of reliance suggested by the Commission on internal accounts, or with significantly increasing the number of calculations necessary to derive a rate.

41/ Similarly, the suggestion in the Whitepaper that investment should based on replacement or "market" cost would provide an over-recovery.

Time Warner does not believe that the Commission must try in such exquisite detail to determine what portions of the Part 32 accounts were included in the Part 31 accounts relied on by the Commission when pole attachment rates were first developed in late 1970s and early 1980s. The Commission recognized at that time that it was sufficient to reach a sort of "rough justice" by including all of accounts that were largely related to pole attachment activities and excluding all of accounts that have only marginal relationship 42/ We suggest that the Commission do the same here with the Part 32 accounts. Include those accounts that are substantially related to poles, but exclude those accounts that are not.

We do not understand, for example, why the Commission is now proposing to include in the Administrative Component Accounts 6110 (Network support) or 6534 (Plant operations administrative expense), when the Common Carrier Bureau has previously found that these accounts should not be included 43/. If there are any pole related expenses in these accounts, we believe their proportion to be extremely small.

42/ *See, e.g., In re Amendment of Rules & Policies Governing the Attachment of Cable Television Hardware to Utility Poles, Report & Order*, 2 F.C.C. Rcd 1387 ¶ 37 (rel. July 23, 1987); *American CableSystems of Florida, Ltd. v. Florida Power & Light Co.*, PA 9-0012 (rel. June 15, 1995).

43/ Letter from Kenneth P. Moran, Chief, Accounting and Audits Div., CC Bur. to Paul Glist, Esq. 5 FCC Rcd 3898 (CCBur. June 22, 1990).

B. Maintenance Expenses

Time Warner does agree with the Commission's proposal to exclude pole rental expense from the maintenance component, but only because rental expense is separately set out in the ARMIS Reports, and the Common Carrier Bureau has previously suggested this exclusion. 44/

We do not agree that Account 590 should be included in the maintenance expense for electric companies. The Commission has previously found that adding this expense would unduly complicate the formula. 45/ Although we do not dispute that some of Account 590 expenses relate to poles, to add the expense to the formula, the expense would properly have to be spread among all of the investment accounts supported by the expense -- accounts 361 (Structures and improvements), 362 (Station equipment), 363 (storage battery equipment), 364 (Poles, towers and fixtures), 365 (Overhead conductors and devices), 366 (Underground conduit), 367 (Underground conductors and devices), 368 (Line transformers), and 369 (Services). Time Warner believes that additional effort in making these calculations necessary to spread the expense in Account 590 among the various distribution investment

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44/ *Id.*

45/ *See, e.g., TCA Management Co. v. Southwestern Public Service Co.*, FCC 95-221, PA 90-0002 (rel. June 15, 1995); *Warner Amex Cable Communications, Inc. v. Southwestern Electric Power Co.*, Mimeo No. 2718 (C.C. Bur. rel Mar. 12, 1982).

accounts is not worth the minimal impact on the bottom line. Moreover, as noted above, the added accuracy that could be provided by these calculations would fairly have to be balanced by added accuracy that could be obtained by other refinements that would tend to decrease the final rate.

III. THE COMMISSION SHOULD CODIFY A CONDUIT METHODOLOGY THAT FULLY RECOGNIZES INNER DUCT CAPABILITY

Although conduit rates have not been subject of extensive Commission consideration, Time Warner believes that the formulas for determining maximum just and reasonable conduit rates should be quite simple. The only differences between the pole and conduit rates is that conduit rates use a different investment account (Accounts 366 (electric) and 2441 (telephone)). The maintenance expenses for telephone are contained in Account 6441, which should be divided by the net conduit investment.. For electric companies, the maintenance expense (Account 594) should be divided by the net investment in Accounts 366, 367, and 369.

The most significant difference between the pole attachment formula and conduit attachments involves the determination of usable space. It is Time Warner's belief that most conduit is currently placed in banks including a number of ducts, usually from four to nine. In the one decision dealing with conduits, the Commission treated all conduit feet as usable, except for that portion reserved for maintenance purposes, when the cable operator is permitted

to use that duct for its own maintenance. 46/. Time Warner is not convinced that utilities really "reserve" any ducts for maintenance. We believe that even so-called "maintenance ducts" will be used if necessary by the utility and that they should be considered "usable." Indeed, to the extent that the utility does not have a "maintenance duct" still reserved in every conduit bank, that fact would seem to prove that all ducts are "usable" when considered necessary by the utility. To take a duct out of the "usable" group by claiming it is "reserved for maintenance" appears to accept an artifice used by the utilities to increase the conduit occupancy charge. Moreover, much of conduit that has been placed is capable of being divided into several different compartments by the use of "inner duct." Time Warner believes that the Commission's suggestion that it adopt the Massachusetts Department of Public Utilities' "half-duct" convention is overly generous to the utilities. 47/ In fact, Time Warner understands that the four-inch duct typically used by utilities can be divided into three or four compartments by use of inner duct. Accordingly, we propose that the Commission adopt a "one-third duct" presumption, and divide the cost per duct foot by three.

46/ *Multimedia Cablevision, Inc. v. Southwestern Bell Telephone Co.*, FCC 96-362, PA 95-008 (rel. Sept. 3, 1996).

47/ *See Greater Media, Inc. v. New England Tel.& Tel,* Massachusetts D.P.U. 91-218 (1992).

IV. CONCLUSION

For almost 20 years, the Commission has wrestled to keep pole attachment proceedings from overwhelming its resources in the face of utilities that resent having their pole attachment rates restricted and regulated. Time Warner strongly recommends that the Commission limit any changes to the formula to those absolutely necessary. Although accuracy is always to be encouraged, so also is simplicity, certainty and the expeditious process sought by Congress in the first place. The formula has worked well, and its simplicity and certainty have encouraged settlement. Any revisions will raise additional questions and additional calls for more accuracy and complexity. The Commission would be wise, in this instance, to leave the sleeping dog alone.

Respecfully submitted,

HOGAN & HARTSON

By: 

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Attorneys for Time Warner Cable

June 27, 1997

ATTACHMENT A

STATEMENT OF KIM REID

1. Kim Reid, Director of Construction for Time Warner Cable in New York City, makes this statement for use in FCC Cable Services Docket No. 97-98.

2. I have been directly involved in cable television outside plant construction since 1972. I have worked for TCI and Time Warner, and have had my own construction and consulting firm for 12 years. In these jobs, I have supervised cable construction in many different areas of country, in urban, suburban, and more rural situations. I am currently assisting the operating division in New York with an upgrade of the cable facilities to a hybrid fiber-coaxial format.

3. Over the years, the utility pole owners have generally engaged in a practice of installing larger poles along city and suburban streets in constructing in new neighborhoods and when replacing poles that need to be replaced. In my experience, the average pole attached to by cable television facilities is now 40 feet or longer.

4. However, poles that are 30 feet or shorter continue to be common in backyards and alleys, and along rural roads. Where only communications facilities are involved, as with telephone poles that are not shared with electric utilities, poles of 30 feet and less in length can be used to cross most streets. (Assuming a 6-foot setting depth and 18 feet required to achieve minimum grade, there would be 6 feet of space on the pole for attachment of communications facilities. In addition, Time Warner continues to attach to many electric company poles of 30 feet or less as drop poles. In my experience, there is no basis whatsoever for an argument that poles 30 feet in length are not used for cable attachments.

5. Actually, in my experience cable operators have attachments on many more poles that are 30 feet or less in length than on poles that are 50 feet or more in length. Cable operators attach to poles 50 feet or longer only rarely.

6. The electric companies continue to use the so-called 40-inch "safety space" between electric conductors and communications facilities for the attachment of streetlight brackets, transformers, and other equipment. I have seen no decrease in these practices over the years.

7. It is the practice of the electric companies to place lightning arresters on some poles and to ground their facilities. Telephone companies also ground their equipment, as do cable operators. The lightning arresters and grounds protect not only the poles, but also all of the facilities on the pole, including

overhead conductors, racks, line transformers, services, street lights and signal systems.

8. Since 1990, the National Electrical Safety Code has used a method that requires a minimum vertical clearance of 15.5 feet across and along most urban and suburban streets. The required clearances in yards and along rural streets are less. In recognition that lines sag due to weight, span length, and weather conditions, the NESC requires that these elements be accounted for in construction. For example, the NESC requires that account be taken of ice and wind loading in different amounts, depending on the area of the country.

9. The amount of sag to account for in a particular situation can be calculated using a computer program. For illustrative purposes, we have calculated the amount of sag that must be added to the NESC minimum clearances in two different situations, one in a "heavy loading" area, where the ice and wind loading conditions are the worst, and one in a "light loading" area, where the anticipated expansion of the strand due to weather is the least. In each example, we have assumed a 1/4 inch steel support strand and 1/2 inch coaxial cable, which comprise about 70 to 80 percent of Time Warner's overhead plant construction. Our typical span length is between 135 and 160 feet, and we have assumed a span of 150 feet in each situation.

10. Under these assumptions, the amount of sag that Time Warner would have to account for in its construction would be 2.94 feet and 2.32 feet in the two situations. This means that if the required vertical clearance is 15.5 feet, the lowest attachment on the pole could be at a height of 18.44 feet and 17.82 feet, assuming the ground to be basically level between the poles. If the required vertical clearance is 13.5 feet, then the attachments could be made at 16.44 feet and 15.82 feet, respectively.

11. The foregoing is true and correct and submitted under penalty of perjury.

Kim Reid

May 5, 1997

ATTACHMENT B

KANSAS CITY POWER & LIGHT COMPANY
ANNUAL PLANT REPORT - DECEMBER 31, 1995

ELECTRIC UTILITY–DISTRIBUTION PLANT

ACCOUNT 364–POLES, TOWERS AND FIXTURES

TOTAL COMPANY

	TOTALS		MISSOURI		KANSAS	
POLES-WOOD (FT)	QUANTITY	COST	QUANTITY	COST	QUANTITY	COST
20	241	12,500.37	237	7,802.79	4	4,697.58
25	3,259	117,644.21	2,318	92,255.40	941	25,388.81
30	53,546	8,799,211.37	31,190	5,316,357.48	22,356	3,482,853.89
35	85,258	26,433,459.76	46,449	13,332,723.37	38,809	13,100,736.39
40	66,056	24,532,581.92	38,697	13,028,181.95	27,359	11,504,399.97
45	27,106	12,982,194.23	16,396	7,341,996.42	10,710	5,640,197.81
50	10,381	6,916,267.41	7,401	4,605,172.58	2,980	2,311,094.83
55	3,688	2,791,040.96	2,534	1,762,131.67	1,154	1,028,909.29
60	1,548	1,326,492.87	1,151	897,719.57	397	428,773.30
65	776	1,024,159.38	562	648,668.93	214	375,490.45
70	352	516,846.36	280	351,209.23	72	165,637.13
75	190	282,762.69	160	228,299.85	30	54,462.84
80	100	137,977.09	82	87,903.41	18	50,073.68
85	63	95,797.51	56	86,149.35	7	9,648.16
90	46	146,290.15	43	141,335.80	3	4,954.35
95	14	19,064.35	13	17,621.74	1	1,442.61
100	13	73,009.95	13	73,009.95	0	0.00
105	4	6,068.48	4	6,068.48	0	0.00
110	4	11,978.53	4	11,978.53	0	0.00
STEEL POLES–ALL SIZES	4,166	1,447,150.02	4,079	764,994.84	87	682,155.18
TOTAL POLES	256,811	87,672,497.61	151,669	48,801,581.34	105,142	38,870,916.27
	-4166	-1,447,150				
	252,645	86,225,348				
CROSSARMS	200,161	18,532,544.28	125,763	11,167,551.45	74,398	7,364,992.83
GUYS	189,454	22,691,456.55	113,104	11,936,942.58	76,350	10,754,513.97
UNUNITIZED PLANT IN SERVICE	0	4,400,961.20	0	2,730,372.95	0	1,670,588.25
OTHER	1,678	97,062.25	1,670	94,365.04	8	2,697.21
TOTAL ACCT–364		$133,394,521.89		$74,730,813.36		$58,663,708.53

ATTACHMENT C

Table 232-1 Vertical Clearance of Wires, Conductors, and Cables Above Ground, Roadway, Rail, or Water Surfaces

(Voltages are phase-to-ground for effectively grounded circuits and those other circuits where all ground faults are cleared by promptly de-energizing the faulted section, both initially and following subsequent breaker operations. See the definition section for voltages of other systems.) **FT**

Nature of surface underneath wires, conductors, or cables	(11) Insulated communication conductors and cable; messengers; surge protection wires; grounded guys; neutral conductors meeting Rule 230E1; supply cables meeting Rule 230C1 (ft)	Non-insulated communication conductors; supply cables of 0 to 750 V meeting Rules 230C2 or 230C3 (ft)	Supply cables over 750 V meeting Rules 230C2 or 230C3; open supply conductors, 0 to 750 V (ft)	Open supply conductors, over 750 V to 22 kV (ft)	Trolley and electrified railroad contact conductors and associated span or messenger wires (1) 0 to 750 V to ground (ft)	Trolley and electrified railroad contact conductors and associated span or messenger wires (1) over 750 V to 22 kV to ground (ft)
Where wires, conductors, or cables cross over or overhang						
1. Track rails of railroads (except electrified railroads using overhead trolley conductors) (2) (16) (20)	23.5	24.0	24.5	26.5	22.0 (4)	22.0 (4)
2. Roads, streets, alleys; nonresidential driveways, parking lots, and other areas subject to truck traffic (21)	15.5 (13)	16.0 (13)	16.5	18.5	18.0 (5)	20.0 (5)
3. Residential driveways	15.5 (7) (13)	16.0 (7) (13)	16.5 (7)	18.5	18.0 (5)	20.0 (5)
4. Other land traversed by vehicles, such as cultivated, grazing, forest, orchard, etc	15.5	16.0	16.5	18.5	-	-
5. Spaces and ways subject to pedestrians or restricted traffic only (9)	14.0	12.0 (8)	12.5 (8)	14.5	16.0	18.0
6. Water areas not suitable for sailboating or where sailboating is prohibited (19)	14.0	14.5	15.0	17.0	-	-
7. Water areas suitable for sailboating including lakes, ponds, reservoirs, tidal waters, rivers, streams, and canals with an unobstructed surface area of: (17) (18) (19)						
(a) Less than 20 acres	17.5	18.0	18.5	20.5	-	-
(b) 20 to 200 acres	25.5	26.0	26.5	28.5	-	-
(c) Over 200 to 2000 acres	31.5	32.0	32.5	34.5	-	-
(d) Over 2000 acres	37.5	38.0	38.5	40.5	-	-
8. Public or private land and water areas posted for rigging or launching sailboats	Clearance above ground shall be 5 ft greater than in 7 above, for the type of water areas served by the launching site					
Where wires, conductors, or cables run along and within the limits of highways or other road rights-of-way but do not overhang the roadway						
9. Roads, streets, or alleys	15.5 (13) (24)	16.0 (13)	16.5	18.5	18.0 (5)	20.0 (5)
10. Roads in rural districts where it is unlikely that vehicles will be crossing under the line	13.5 (10) (12)	14.0 (10)	14.5 (10)	16.5	18.0 (5)	20.0 (5)

(1) Where subways, tunnels, or bridges require it, less clearances above ground or rails than required by Table 232-1 may be used locally. The trolley and electrified railroad contact conductor should be graded very gradually from the regular construction down to the reduced elevation.

(2) For wire, conductors, or cables crossing over mine, logging, and similar railways which handle only cars lower than standard freight cars, the clearance may be reduced by an amount equal to the difference in height between the highest loaded car handled and 22 ft, but the clearances shall not be reduced below that required for street crossings.

(3) This footnote not used in this edition.

(4) In communities where 21 ft has been established, this clearance may be continued if carefully maintained. The elevation of the contact conductor should be the same in the crossing and next adjacent spans. (See Rule 225D2 for conditions which must be met where uniform height above rail is impractical.)

(5) In communities where 16 ft has been established for trolley and

electrified railroad contact conductors 0 to 750 V to ground, or 18 ft for trolley and electrified railroad contact conductors exceeding 750 V, or where local conditions make it impractical to obtain the clearance given in the table, these reduced clearances may be used if carefully maintained.

(6) This footnote not used in this edition.

(7) Where the height of attachment to a building or other installation does not permit service drops to meet these values, the clearances may be reduced to the following:

		(feet)
(a)	Insulated supply service drops limited to 300 V to ground	12.5
(b)	Insulated drip loops of supply service drops limited to 300 V to ground	10.5
(c)	Supply service drops limited to 150 V to ground and meeting Rules 230C1 or 230C3	12.0
(d)	Drip loops only of service drops limited to 150 V to ground and meeting Rules 230C1 or 230C3	10.0
(e)	Insulated communication service drops.	11.5

(8) Where the height of attachment to a building or other installation does not permit service drops to meet these values, the clearances may be reduced to the following:

		(feet)
(a)	Insulated supply service drops limited to 300 V to ground	10.5
(b)	Insulated drip loops of supply service drops limited to 300 V to ground	10.5
(c)	Supply service drops limited to 150 V to ground and meeting Rules 230C1 or 230C3	10.0
(d)	Drip loops only of supply service drops limited to 150 V to ground and meeting Rules 230C1 or 230C3.	10.0

(9) Spaces and ways subject to pedestrians or restricted traffic only are those areas where equestrians, vehicles, or other mobile units, exceeding 8 ft in height, are prohibited by regulation or permanent terrain configurations or are otherwise not normally encountered or not reasonably anticipated.

(10) Where a supply or communication line along a road is located relative to fences, ditches, embankments, etc, so that the ground under the line would not be expected to be travelled by pedestrians, this clearance may be reduced to the following values:

		(feet)
(a)	Insulated communication conductor and communication cables	9.5
(b)	Conductors of other communication circuits	9.5
(c)	Supply cables of any voltage meeting Rule 230C1 and supply cables limited to 150 V to ground meeting Rules 230C2 or 230C3	9.5
(d)	Insulated supply conductors limited to 300 V to ground	12.5
(e)	Guys	9.5

(11) No clearance from ground is required for anchor guys not crossing tracks, rails, streets, driveways, roads, or pathways.

(12) This clearance may be reduced to 13 ft for communication conductors and guys.

(13) Where this construction crosses over or runs along alleys, driveways, or parking lots, this clearance may be reduced to 15 ft.

(14) This footnote not used in this edition.

(15) This footnote not used in this edition.

(16) Adjacent to tunnels and overhead bridges which restrict the height of loaded rail cars to less than 22 ft, these clearances may be reduced by the difference between the highest loaded rail car handled and 22 ft, if mutually agreed to by the parties at interest.

(17) For controlled impoundments, the surface area and corresponding clearances shall be based upon the design high water level. For other waters, the surface area shall be that enclosed by its annual high water mark, and clearances shall be based on the normal flood level. The clearance over rivers, streams, and canals shall be based upon the largest surface area of any 1 mi long segment which includes the crossing. The clearance over a canal, river, or stream normally used to provide access for sailboats to a larger body of water shall be the same as that required for the larger body of water.

(18) Where an overwater obstruction restricts vessel height to less than the applicable reference height given in Table 232-3, the required clearance may be reduced by the difference between the reference height and the overwater obstruction height, except that the reduced clearance shall be not less than that required for the surface area on the line-crossing side of the obstruction.

(19) Where the US Army Corps of Engineers, or the State, or surrogate thereof has issued a crossing permit, clearances of that permit shall govern.

(20) See Rule 234I for the required horizontal and diagonal clearances to rail cars.

(21) For the purpose of this rule, trucks are defined as any vehicle exceeding 8 ft in height. Areas not subject to truck traffic are areas where truck traffic is not normally encountered or not reasonably anticipated.

(22) This footnote not used in this edition.

(23) This footnote not used in this edition.

(24) Communication cables and conductors may have a clearance of 15 ft where poles are back of curbs or other deterrents to vehicular traffic.